

**BANKS, CURRAN, SCHWAM & SQUIRRELL, LLP**

ATTORNEYS & COUNSELLOERS AT LAW

BARBARA BANKS SCHWAM  
DAVID J. SQUIRRELL

61 SMITH AVENUE  
MOUNT KISCO, N.Y. 10549

OF COUNSEL  
MAURICE F. CURRAN

WILLIAM F. BANKS, RETIRED

(914) 666-2161  
FAX: (914) 666-2450

March 17, 2014

Hon. Nelson Roman  
United States District Court  
United States Courthouse  
300 Quarropas Street, Chambers 533  
White Plains, New York 10601-4150

Re: Curran v. Aetna et al  
Docket No.: 13 cv 00289 (NSR)

Honorable Sir:

Enclosed is Plaintiffs' proposed Case Management Plan and Scheduling Order pursuant to the Court's Order entered 12/6/2013.

Defendants' Counsel has agreed to the respective dates in the proposed Scheduling Order, but takes the position that there should be no discovery outside the administrative record. The Court's Order of 12/6/2013 determined that "depositions shall be included [in the Scheduling Order] if deemed required by the Court".

Plaintiffs take the position, based on Metropolitan Life Insurance Co. v. Glenn, 554 U.S. 105 (2008), that "a plan administrator [that] both evaluates claims for benefits and pays benefits" has a conflict of interest for ERISA purposes. In such a case, as here, plaintiffs submit that discovery is not limited to the administrative record; the question is whether the discovery sought is relevant in itself or appears reasonably calculated to lead to the discovery of admissible evidence. Hogan Cross v. Metropolitan Life Insurance Company, 568 F. Supp. 2d 410, 414 U.S.D. N.Y., 2008). Plaintiffs intend to serve Interrogatories, pursuant to Rule 33, Fed. R. Civ. P. and a Notice pursuant to Rule 26 (b) Fed. R. Civ. P..

Defendants have reserved their right to file motions to limit or curtail discovery.

Respectfully submitted,

DAVID J. SQUIRRELL (DS 8646)

Cc: Christopher Abatemarco, Esq.  
Attorney for Defendants **By email**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Rev. Jan. 2012

Bridget Curran et al.,

Plaintiff(s),

- against -

Aetna Life Insurance Company et al.  
Defendant(s).CIVIL CASE DISCOVERY PLAN  
AND SCHEDULING ORDER

12 CV 289 (NSR)

This Civil Case Discovery Plan and Scheduling Order is adopted, after consultation with counsel, pursuant to Fed. R. Civ. P. 16 and 26(f):

1. All parties [consent] do not consent to conducting all further proceedings before a Magistrate Judge, including motions and trial, pursuant to 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. (If all parties consent, the remaining paragraphs of this form need not be completed.)
2. This case is [is not] to be tried to a jury.
3. Joinder of additional parties must be accomplished by September 19, 2014.
4. Amended pleadings may be filed until September 19, 2014.
5. Interrogatories shall be served no later than May 16, 2014, and responses thereto shall be served within thirty (30) days thereafter. The provisions of Local Civil Rule 33.3 [shall] shall not apply to this case.
6. First request for production of documents, if any, shall be served no later than May 16, 2014.
7. Non-expert depositions shall be completed by November 14, 2014. Depositions shall take place if deemed refused by the court.
  - a. Unless counsel agree otherwise or the Court so orders, depositions shall not be held until all parties have responded to any first requests for production of documents.
  - b. Depositions shall proceed concurrently.
  - c. Whenever possible, unless counsel agree otherwise or the Court so orders,

non-party depositions shall follow party depositions.

8. Any further interrogatories, including expert interrogatories, shall be served no later than September 24, 2014.
9. Requests to Admit, if any, shall be served no later than January 30, 2015.
10. Expert reports shall be served no later than Plaintiffs do not anticipate the proffer of expert testimony. At this point
11. Rebuttal expert reports shall be served no later than \_\_\_\_\_.
12. Expert depositions shall be completed by \_\_\_\_\_.
13. Additional provisions agreed upon by counsel are attached hereto and made a part hereof.
14. **ALL DISCOVERY SHALL BE COMPLETED BY January 30, 2015.**
15. Any motions shall be filed in accordance with the Court's Individual Practices.
16. This Civil Case Discovery Plan and Scheduling Order may not be changed without leave of Court (or the assigned Magistrate Judge acting under a specific order of reference).
17. The Magistrate Judge assigned to this case is the Hon. \_\_\_\_\_.
18. If, after entry of this Order, the parties consent to trial before a Magistrate Judge, the Magistrate Judge will schedule a date certain for trial and will, if necessary, amend this Order consistent therewith.
19. The next case management conference is scheduled for \_\_\_\_\_ at \_\_\_\_\_. (The Court will set this date at the initial conference.)

SO ORDERED.

Dated: White Plains, New York

---

Nelson S. Román, U.S. District Judge